Co. v. *Central News Co.* (1897), 2 Ch. Div. 48; even when the contract contains no such express condition. *Kiernan* v. *Manhattan Co.*, 50 How. Pr. 194. Publishers of copyrighted books cannot enjoin the sale thereof by purchasers from an agent with notice of the agent's agreement to sell only by subscription unless the agent has acquired no property in the books but merely delivers them for the publisher. *Henry Bill Pub. Co.* v. *Smythe*, 27 Fed. Rep. 914; *Harrison* v. *Maynard*, 61 Fed. Rep. 689. But a right of action lies against such a purchaser participating in agent's fraud. *Harrison* v. *Maynard*, supra.

SALES—ILLEGAL—KNOWLEDGE OF VENDEE'S UNLAWFUL INTENT.—Plaintiff, a wholesale liquor dealer in Massachusetts, sold liquors to a retailer in Maine, knowing that they were to be resold there contrary to law. In an action for the price, *Held*, that mere knowledge of the unlawful intent did not make the sale void. *Graves* v. *Johnson* (1901), 179 Mass. 53, 60 N. E. Rep. 383.

When this case was before the court the first time they held that where such a sale is made "with a view" to the unlawful resale no action will lie for the price; 156 Mass. 211, 30 N. E. Rep. 818, following *Webster* v. *Munger*, 8 Gray 584. This latter rule is peculiar to Massachusetts, but the decision in the principal case seems to make it practically equivalent to the general rule requiring some participation by the seller in the unlawful purpose, thus overruling dicta to the contrary in former cases; *Suit* v. *Woodhall*, 113 Mass. 391. Alabama no longer holds mere knowledge of the illegal use sufficient to avoid the contract; *Bluthenthal* v. *McWhorter*, 131 Ala. 642, 31 S. Rep 559. See MECHEM ON SALES, secs. 1010-1029, where the authorities are collected.

STATUTE OF FRAUDS—PROMISE TO PAY DEBT OF ANOTHER—Under a written contract for the sale of land, possession was to be given in July. Pursuant to a subsequent oral contract possession was given in April of the same year in consideration that the vendee pay the taxes then a lien upon the land conveyed. The deed contained a covenant against all incumbrances. The vendee paid the taxes and then sued upon the covenant for a breach thereof. *Held*, the oral agreement to pay the taxes was not within the statute of frauds and the vendee could not recover. *Gill* v. *Ferrin* (1902), — N. H. —, 52 Atl. Rep. 558.

But a contract for the sale of land cannot be varied by a subsequent oral agreement, as that the buyer agrees to take a less perfect title than that agreed upon in the contract in consideration of an earlier possession than originally agreed. *Rucker* v. *Harrington*, 52 Mo. App. 481. Nor is oral evidence admissible to prove that, a few days before the execution of the deed the parties agreed that, in consideration that the defendant would execute the deed to the plaintiff for a certain sum, the plaintiff would assume a liability to an assessment upon the land for betterment. *Flynn* v. *Bourneuf*, 143 Mass. 277. Parol evidence may be admitted to show the state of facts existing at the time of conveyance, not to contradict a deed but to show what the parties intended to include in the warranty. *Allen* v. *Lee*, 1 Ind. 58, 48 Am. Dec. 352. So existing easements known are usually not included in covenants against incumbrances. *Taylor* v. *Gilman*, 25 Vt. 411. To the contrary see *Schmisseur* v. *Penn*, 47 Ill App. 278.

TAXATION—INTERSTATE COMMERCE—The tax law of New York exempted from taxation earnings derived from business of an interstate character. The relator maintained a cab service at the terminus of its railroads in New York city. This service was done under a separate contract and was not confined to travelers on relator's road. It was conducted at a loss. The comptroller

assessed the business for taxation, and the relator resisted this taxation on the ground that the cab service was interstate commerce. *Held*, that it was not interstate commerce. *People, ex rel. Penn. R. Co.* v. *Knight* (1902, — N. Y. —, 64 N. E. Rep. 152.

It is the character of the service, not of the carrier, said the court, that determines this question. This cab service is merely a carriage between two points within the state, under a separate contract, and not restricted to travelers on the road. It can only become interstate under a contract for continuous carriage to or from some outside point. The court cited and relied upon, among others, these cases: *Railroad Co.* v. *Interstate Commerce Commission*, 162 U. S. 184; *Railroad Co.* v. *Behlmer*, 175 U. S. 648; *Munn* v. *Illinois*, 94 U. S. 113; *Railway Co.* v. *Interstate Commerce Commission*, 74 Fed. 803; *Interstate Commerce Commission* v. *Railroad*, 167 U. S. 633. Bartlett, J., dissented, contendiug that the cab service was interstate commerce; that the relator simply extended its care of passengers at a loss to itself, and provided an additional means of transportation. He cited *People* v. *Wemple*, 138 N. Y. 1; *The Daniel Ball*, 10 Wall. 557; *Foster* v. *Davenport*, 22 How. 244; *Cutting* v. *Navigation Co.*, 46 Fed. Rep. 641; *Leloup* v. *Port of Mobile*, 127 U. S. 640; *Crutcher* v. *Kentucky*, 141 U. S. 47. There would seem to be no other case precisely in point. If the cab service operated as an inducement to travelers to use relator's road, it would seem interstate commerce, otherwise not. The fact that this service was conducted at a loss would be some evidence that it was not an entirely independent service but intended as an aid to the railroad.

TRUSTEE—LIABILITY—NOTICE.—Defendant, as an attorney, in 1886, drew a deed of trust, to secure two notes,—one payable to Rebecca G., and the other to Benjamin G. The party for whom the paper was drawn took it away, unexecuted, and later executed and recorded it, without any knowledge or agency on the part of defendant. The latter forgot about the matter until 1898, twelve years later, when Rebecca G. demanded that he, as trustee, should sell the land. Defendant asked for the deed, and was referred to the registry of the same; unknown to the defendant, the record was defective. As recorded, the deed named defendant as trustee, and required him "to pay in full the note to Rebecca G., and the surplus, if any," to the grantor. The note of Benjamin G. was not mentioned. At the sale of the land it was purchased by Rebecca G. for less than the amount of her note. Plaintiff became holder of the other note in 1901, up to which time no notice of its existence had been given to the trustee. *Held*, that defendant was not chargeable with notice of defect in deed as recorded. *Goodyear* v. *Cook* (1902), — N. C. —, 42 S. E. Rep. 332.

The court said: "The mere fact that the defendant had once drawn a trust deed for the grantor, requiring payment of the $175 note out of proceeds of sale, as well as payment of the $370 note, which alone is required by the deed as recorded, was no notice to him that the deed was improperly registered." The learned court cites no authorities in support of its decision, but common sense and justice would not well admit of any other holding. *Goodwin* v. *Dean*, 50 Conn. 517, is directly in point. In that case the court said: "Drawing deeds is a part of the ordinary business of a practicing attorney, and something that he may have occasion to do several times in a day. If any man should remember the details of a single transaction of the kind for nine years, it would be a remarkable instance of a retentive memory. It is certainly not to be expected as a common thing. No principle of law is founded on an assumption that that will happen which seldom or never does happen." Carpenter, J., in this Connecticut case, cites no authorities but